DOCUMENT RESUME

ED 108 361 EA 007 279

TITLE	Smoking in the Public Schools. A Legal Memorandum.
INSTITUTION	National Association of Secondary School Principals, Washington, D.C.
PUB DATE	[72]
NOTE	7p.
AVAILABLE FROM	National Association of Secondary School Principals, 1904 Association Drive, Reston, Virginia 22091 ($0.25, quantity discounts, payment must accompany orders of $10.00 or less)
EDRS PRICE	MF-$0.76 PLUS POSTAGE. HC Not Available from EDRS.
DESCRIPTORS	Civil Liberties; *Court Litigation; *School Law; Secondary Education; *Smoking; *State Legislation

ABSTRACT

As evidenced by statutory material, court decision, and school codes, the solution to the issue of smoking in the public schools is far from clear. Certain conclusions, nevertheless, can be drawn. Principals and all educators are faced with a question to which they must react. Whatever the case in the past, there is now undisputed knowledge that smoking is a causal factor in many injurious, debilitating, and often fatal diseases. Given this awareness, the question becomes whether or not to condone smoking on school premises ("allow" is not the proper term, as very often prevention is not within the practical power of the school principal). The National Association of Secondary School Principals (NASSP) suggests that student smoking lounges may well implicitly promote smoking in the public schools. Therefore, in lieu of establishing them, NASSP suggests that intensive educational programs to inhibit and/or finally terminate smoking be instituted. NASSP also recognizes the imperative need to involve students, faculty, parents, and the community-at-large in deliberations on this sensitive subject. (Author)

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NATIONAL ASSOCIATION OF SECONDARY SCHOOL PRINCIPALS

A Legal Memorandum

Washington, D.C. 20036

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Concerning
SMOKING IN THE PUBLIC SCHOOLS

Smoking is an increasingly serious problem which plagues a vast majority of secondary school administrators. In seeking advice and counsel from recognized authorities on the subject, NASSP's Executive Secretary contacted Dr. Jesse L. Steinfeld, Surgeon General of the United States. He replied:

> There is no question medically or scientifically that cigarette smoking is this nation's number one public health problem. Implicit encouragement of this pernicious habit by school authorities through officially condoned smoking areas is not in the best interests of our children or of our citizens.
>
> It seems to me that school authorities have a responsibility to set an example to the students for whose instruction they are responsible. Presumably there are parents who condone smoking by their children, but I hope that members of our school boards, who obviously are concerned about the health and welfare of the students, will do nothing to encourage this dangerous habit. Your interest in combating this serious health hazard is very much appreciated.

Most communities and school systems have ordinances and regulations relating to health and safety that include no-smoking laws. The enforcement of these laws, however, has become progressively more difficult. In public schools, the smoking problem has become a serious administrative and legal problem. This memorandum illustrates current law on the matter, both statutory and judicial; provides, for purposes of information, two representative programs now in operation; and suggests some guidelines that school administrators can follow as preventive measures.

State Statutes and Local Ordinances

State laws generally regulate smoking only indirectly through laws relating to licensing, taxation, and distribution of tobacco products. In some states, however, smoking is regulated directly through laws which forbid it in areas where food and beverage are prepared and stored. Most states, too, explicitly prohibit the sale or giving of tobacco to minors. Twelve states make it illegal for a minor to smoke. Local fire safety ordinances, on the other hand, nearly always regulate smoking directly by prohibiting it in certain public and private places, e.g., industrial sites, forest or wilderness areas, hospitals, and public buildings and vehicles.

Although several states have laws relating to smoking and minors, few statutes expressly prohibit minors from smoking on school property. This behavior is commonly controlled by local school district regulations. In Massachusetts, nevertheless, the school code specifies that students be taught the ill effects of smoking and alcohol; and, in Iowa, the advertising of tobacco is forbidden within a certain distance of public schools.

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Case Law

Court decisions ruling directly on the validity of school antismoking regulations are also few. The following cases, however, are representative of current judicial attitude on the subject.

Davis v. Ann Arbor Public Schools, 313 F. Supp. 1217 (1970), examined the no-smoking regulations in Michigan public schools. In this case, a junior high school student who was suspended for smoking charged that the school district violated his right to due process and sought reinstatement. Although the student had a history of "incorrigible conduct," and his smoking in violation of school rules was simply the last of a long series of rule infractions, it was the proximate cause of his suspension. The court *did not* rule directly on the reasonableness of the regulation, but it did rule that the student had received all reasonable consideration, and that the requisites of due process (i.e., knowledge, notice, reasons for suspension, and informal hearing) had been satisfied. Therefore, the court by implication upheld the school antismoking regulation as reasonable, stating:

> Public school authorities may formulate rules and regulations thought necessary or desirable for maintenance of orderly programs of classroom learning, and in doing so they have wide latitude of discretion, subject only to restriction of reasonableness.

In another recent and important case, *Anderson v. Independent School District No. 281*, 176 N.W. 2d 640 (1970), a Minnesota high school student was suspended for violating the school antismoking regulations. The student, at the time of his first infraction of the regulation, was reminded that he could be expelled for repeated violations of the school's no-smoking rule. After a second violation of the regulation, the student was expelled. School authorities had duly promulgated school policies which were communicated to all students in an official handbook. The rule governing smoking read:

> Tobacco: Smoking is a serious and costly habit. Minnesota State Law states that a student cannot smoke until he is 18 years old. Smoking on school property (in the buildings, on school grounds and in cars on school grounds) or at any school function, dance, or athletic event will

Resolution of Vermont Interagency Council On Smoking and Health

The Vermont Interagency Council on Smoking and Health recognizes the difficulties which many schools face in enforcing smoking bans. It recognizes also that many schools have bans but do not enforce them. The Interagency Council feels that smoking should be banned in school buildings, and this ban should be strictly enforced.

While we consider it undesirable for a school system to allow smoking, we are even more concerned with the school system's total approach to the subject of smoking and health. The school system that has a problem with smoking should ask such questions as: Is smoking education a part of the school's health education program? Has the school system offered assistance to smokers? Has the school system been concerned with staff education with regard to cigarette smoking?

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be met with severe disciplinary action. A student found with cigarettes in his possession shall be subject to suspension until the parents return for a conference. A student who is smoking on school property, or at a school-sponsored function, shall be suspended for three days and must be reinstated by a panel. The second offense in any one year will be met with a referral to a court or a recommendation to the school board for expulsion from school for the remainder of the school year. Smoking offenses shall be recorded.

The lower court ruled:

Defendants are ordered to admit Steven to the regular educational program of the school from which he was suspended, or make provision for a comparable education elsewhere, subject to such reasonable counselling, educational, or disciplinary measures as the Defendants may deem appropriate for Steven's rehabilitation and the preservation of their governance.

The School Board appealed to the lower court injunction against the suspension, but before a decision could be reached, the case was dismissed as moot because the student voluntarily withdrew from school. The lower court ruling, however, in the words of the appellate court, apparently did not preclude the school board from hearing and ruling on the basic question of expulsion for violation of the no-smoking regulation.

In Scottsdale, Ariz., a high school student in *Burnkrant v. Saggau*, 470 p. 2d 115 (1970), called on the court to enjoin the school district from suspending him for the rest of the semester because of a second infraction of the school rule prohibiting smoking on school grounds. The lower court ruled for the student because school officials had failed to follow the established procedures for suspending students.

Although the Arizona Court of Appeals did not rule directly on the issue of the validity of the smoking prohibitions, it affirmed the lower court's decision and by implication upheld the school's no-smoking regulations.

The position of the school board was:

Arizona laws gave the superintendent the authority to suspend pupils for good cause; that smoking has been proven harmful to health; that minors are prohibited from possessing tobacco; and that, accordingly, possession of tobacco by a minor constitutes good cause for suspension.

The law recognizes this need for school officials to have the right to discipline pupils in many ways, including suspension or expulsion from school. It does not give a child the unconditional right to attend a public school. Rather, the law is that 'The enjoyment of the right of attending the public schools is necessarily conditional on compliance by pupils with the reasonable rules, regulations, and requirements of the school authorities, breaches of which may be punished by suspension or expulsion.

The Appellate Court found that:

While courts do possess a limited species of ultimate power to review the reasonableness of school disciplinary regulations and actions taken

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thereunder, they are not "super school boards"; the government of the schools has been vested by the legislature in boards of trustees and boards of education and if there exists a reasonable basis for rules made and actions taken, the same must be upheld. We note, in this connection, that the trial judge's remarks on the subject in his ruling from the bench failed to include a reference to the fact that it is a misdemeanor in Arizona for a minor to have cigarettes or smoking tobacco in his possession.

Concurring in the decision of the Appellate Court, one member of the court in a separate statement commented: "The [school smoking] rule being in conformity with the announced public policy of the state certainly cannot be said to be either unreasonable or unnecessary for the education of our youth."

School Codes

Every school system must confront the issue of smoking in light of local conditions and requirements. The examples below illustrate how two school systems are currently handling the problem.

School Regulation Prohibiting Smoking
Fairfax County, Va., School Board Policy, Section 3 Smoking:

A. Smoking is considered a hazard to health by medical authorities and the School Board.
B. Students shall not smoke on school buses or in school buildings at any time or on school grounds at any time during the school day. (The school day begins with the arrival of the first bus in the morning and ends with the departure of the last bus in the afternoon.)
C. Reappraisal of this policy and its enforcement will be undertaken by the end of the first semester of the 1971-72 school year. [Remains in effect]

School Regulation Allowing Smoking

The Montgomery County, Md., Public School system resolved after finding that "all attempts to enforce the present Montgomery County Public Schools Regulation 540-1, which prohibits student use of tobacco on school premises, have brought increased control problems to the secondary schools," [and finding] "parental support of the prohibition not sufficiently supportive," to repeal their antismoking regulations and enacted the following:

> The decision regarding establishment of areas on school grounds where students in each senior or junior-senior high school may use tobacco will be made by the school principal based on discussions involving students, parents, and school staff. If the decision is to establish such areas, the following guidelines shall apply:
>
> 1. No smoking will be allowed within the school building.
>
> 2. If the decision favors the establishment of student smoking areas, the specifics as to when and where outside the school building

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student smoking will be permitted should be developed jointly by representatives of the student body, the school staff, and the parents.

3. It is anticipated that regulations will vary somewhat from school to school because of such local factors as grade organization, schedules, physical layout of the school plant and grounds, and neighborhood setting.

4. Regulations regarding the use of student smoking areas must be carefully delineated, and broad communication of these regulations must be provided by the school administration and the student government.

5. Students must share the responsibility for the proper use and upkeep of the student smoking areas.

6. Penalties for infractions of student smoking regulations must be forceful and must be conscientiously and consistently administered.

7. A forceful, meaningful program of education highlighting the hazardous effects of smoking has been implemented in the upper elementary grades and must continue through the senior high school. Senior high school students should accept a share in this educational responsibility as their influence, particularly upon younger students, has great possibilities.

Conclusion

As evidenced by the statutory material, court decisions, and school codes, the solution to the issue of smoking in the public schools is far from clear. Certain conclusions, nevertheless, can be drawn.

There is a general agreement that it is one thing to assume moral positions and another thing to implement those positions. Also, it is difficult to impose adult views on students and have significant behavioral changes in a practice like smoking. The 26th Amendment to the U.S. Constitution adds the further dimension of assigning legal adult status to 18-year-olds. However, it is also clear that principals and all educators are faced today with a question to which they must react.

Whatever the case in the past, there is now undisputed knowledge that smoking is a causal factor in many injurious, debilitating, and often fatal diseases. Given this awareness, the question becomes whether to condone smoking on school premises (allow is not the proper term as very often it is not within the practical power of the school principal to prevent).

NASSP suggests that student smoking lounges may well implicitly promote smoking in the public schools. Therefore, in lieu of establishing them, NASSP suggests that intensive educational programs to inhibit and/or finally terminate smoking be instituted. NASSP also recognizes the imperative need to involve students, faculty, parents, and the community at large in deliberations on this sensitive subject.

The following position statement from the American Association for Health, Physical Education, and Recreation (AAHPER) is cited as a representative statement from an association vitally concerned with this issue.

[All school guidelines should provide for the following:]

1. Assuming responsibility for curriculum experiences in smoking education which are timely and stimulating and provide accurate content, as an integral part of the ongoing, unified health instruction program, kindergarten through the twelfth grade.

2. Providing appropriate in-service training opportunities for school personnel, classroom instructional resources, and supervision and consultative services to teachers.

3. Maintaining a physical and emotional school atmosphere that positively reinforces the objectives of the ongoing health instructional program.

4. Encouraging staff and adult visitors to the school to realize the exemplar role they play and the importance of compliance with smoking rules and regulations.

5. Recognizing that parent example, pupil-peer relationships, and other community influences are important in the development of desirable health behavior.

6. Utilizing classroom situations as well as learning experiences in other curricular and extracurricular activities to reinforce the educational process.

7. Emphasizing the exemplar role of all school faculty and staff in relation to smoking on school property.

8. Adopting "no smoking policies" for all groups utilizing school facilities.

9. Abolishing student and faculty smoking facilities.

A Legal Memorandum is published periodically by the National Association of Secondary School Principals, 1201 16th St., N.W., Washington, D.C. 20036. Annual subscription is included in NASSP dues. Single copy price, 25 cents; five or more copies, 15 cents each. Payment must accompany orders of $5 or less.

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